

1 SENATE BILL NO. 116

2 INTRODUCED BY E. STONINGTON

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE
6 AND NEGLECT, YOUTH IN NEED OF CARE, ADOPTION, AND FOSTER CHILDREN; REVISING PROVISIONS
7 RELATING TO PLACEMENT AND DISPOSITION OF ABUSED AND NEGLECTED YOUTH; PROVIDING
8 DEFINITIONS; ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ASSESS
9 REPORTS OF ABUSE OR NEGLECT TO DETERMINE ACTION REQUIRED; PROVIDING THAT THE MONTANA
10 RULES OF EVIDENCE APPLY TO PROCEEDINGS; PROVIDING FOR A BACKGROUND CHECK ON A
11 PERSON SEEKING A YOUTH FOSTER HOME LICENSE; GRANTING THE DEPARTMENT OF PUBLIC
12 HEALTH AND HUMAN SERVICES RULEMAKING AUTHORITY FOR PURPOSES OF LAWS RELATING TO
13 ABUSED AND NEGLECTED YOUTH; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-106, 41-3-201,
14 41-3-202, 41-3-205, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-411, 41-3-412,
15 41-3-413, 41-3-420, 41-3-604, 41-3-1102, 41-3-1103, 41-3-1115, 41-3-1142, 42-3-202, 42-3-301,
16 42-4-112, 42-5-101, 42-5-103, 42-8-101, 42-8-103, 42-8-104, AND 42-8-107, MCA; AND REPEALING
17 SECTIONS 41-3-1014, 41-3-1104, AND 41-3-1114, MCA."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2021 **Section 1.** Section 41-3-101, MCA, is amended to read:22 **"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:23 (a) ensure that all youth are afforded an adequate physical and emotional environment to promote
24 normal development;25 (b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty
26 owed to the youth;

27 (c) achieve these purposes in a family environment whenever possible;

28 (d) preserve the unity and welfare of the family whenever possible;

29 (e) ensure that there is no forced removal of a child from the family based solely on an

1 unsubstantiated allegation of abuse or neglect; and

2 (f) recognize that a child is entitled to assert the child's constitutional rights.

3 (2) It is the policy of this state to:

4 (a) protect, whenever possible, family unity;

5 (b) provide for the protection of children whose health and welfare are or may be adversely
6 affected and further threatened by the conduct of those responsible for their care and protection;

7 (c) require a department social worker to interview the parents of a child to which a petition
8 pertains, if they are reasonably available, before the state may file a petition for temporary investigative
9 authority and protective services and to require that a judge may not issue an order granting the petition,
10 except an order for immediate protection of the youth, until the parents, if they are reasonably available,
11 are given the opportunity to appear before the judge or have their statements, if any, presented to the
12 judge for consideration before an order is granted; and

13 (d) ensure that whenever removal of a child from the home is necessary, the child is entitled to
14 maintain ethnic, cultural, and religious heritage whenever appropriate.

15 (3) It is intended that the mandatory reporting of abuse or endangerment cases by professional
16 people and other community members to the appropriate authority will cause the protective services of
17 the state to seek to prevent further abuses, protect and enhance the welfare of these children, and
18 preserve family life whenever appropriate.

19 (4) In implementing ~~the policy of this section~~ chapter, whenever it is necessary to remove a child
20 from the child's home, the department shall, when it is in the best interests of the child ~~and when the~~
21 ~~home is approved by the department, place the child,~~ place the child with the child's noncustodial birth
22 parent or with the child's extended family, including adult siblings, grandparents, great-grandparents,
23 aunts, and uncles, when placement with the extended family is approved by the department, prior to
24 placing the child in an alternative protective or residential facility. Prior to approving a ~~home~~ placement,
25 the department shall investigate whether anyone living in the home has been convicted of a crime involving
26 serious harm to children."

27
28 **Section 2.** Section 41-3-102, MCA, is amended to read:

29 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

~~(b) a person providing care in a day-care facility;~~

(B) A PERSON PROVIDING CARE IN A DAY-CARE FACILITY;

~~(c)(b)(c)~~ an employee of a public or private residential institution, facility, home, or agency; or

~~(d)(c)(d)~~ any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

1 (7) (a) "Child abuse or neglect" means:

2 (i) actual harm to a child's health or welfare; or

3 (ii) substantial risk of harm to a child's health or welfare.

4 (b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person
5 responsible for the child's welfare.

6 (c) The term does not include self-defense, defense of others, or action taken to prevent the child
7 from self-harm that does not constitute harm to a child's health or welfare.

8 (8) "Concurrent planning" means to work toward reunification of the child with the family while
9 at the same time developing and implementing an alternative permanent plan.

10 ~~(9)~~(9) "Department" means the department of public health and human services provided for in
11 2-15-2201.

12 (10) "Family group conference" means a meeting that involves family members in either developing
13 treatment plans or making placement decisions, or both.

14 ~~(9)~~(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or
15 other person responsible for the child's welfare:

16 (a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological
17 abuse or neglect;

18 (b) commits or allows to be committed sexual abuse or exploitation of the child;

19 (c) induces or attempts to induce a child into giving untrue testimony that the child or another
20 child was abused or neglected by a parent or person responsible for the child's welfare;

21 (d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food
22 or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or
23 offered financial or other reasonable means to do so;

24 (e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or
25 welfare by failing to intervene or eliminate the risk; or

26 (f) abandons the child.

27 ~~(10)~~(12) "Limited emancipation" means a status conferred on a youth by a court in accordance
28 with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and
29 responsibilities of a person who is 18 years of age or older.

~~(11)~~(13) "Parent" means a biological or adoptive parent or stepparent.

~~(12)~~(14) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

~~(15)~~ "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(13)~~(16) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

~~(17)~~ "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both.

~~(14)~~(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

~~(15)~~(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

~~(16)~~(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

~~(17)~~(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person

1 responsible for the child's welfare.

2 ~~(18)~~(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
3 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
4 sexual abuse of children as described in 45-5-625.

5 ~~(19)~~(23) "Social worker" means an employee of the department who, before the employee's field
6 assignment, has been educated or trained in a program of social work or a related field that includes
7 cognitive and family systems treatment or who has equivalent verified experience or verified training in
8 the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision
9 of this code that is not in this chapter.

10 ~~———— (24) "Substantiated child abuse or neglect" means that an investigating person has determined~~
11 ~~after an investigation that the facts showing that child abuse or neglect occurred are more convincing than~~
12 ~~the facts offered to show that child abuse or neglect did not occur.~~

13 ~~(20)~~(25)(24) "Treatment plan" means a written agreement between the department and the parent
14 or guardian or a court order that includes action that must be taken to resolve the condition or conduct
15 of the parent or guardian that resulted in the need for protective services for the child. The treatment plan
16 may involve court services, the department, and other parties, if necessary, for protective services.

17 ~~(21)~~(26)(25) "Unfounded" means that after an investigation, the investigating person has
18 determined that the reported abuse, neglect, or exploitation has not occurred.

19 ~~(22)~~(27)(26) (a) "Withholding of medically indicated treatment" means the failure to respond to
20 an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration,
21 and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most
22 likely to be effective in ameliorating or correcting the conditions.

23 (b) The term does not include the failure to provide treatment, other than appropriate nutrition,
24 hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical
25 judgment:

26 (i) the infant is chronically and irreversibly comatose;

27 (ii) the provision of treatment would:

28 (A) merely prolong dying;

29 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(22)~~ ~~(27)~~(26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

~~(23)~~(28)(27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, ~~or~~ neglected, or abandoned."

Section 3. Section 41-3-106, MCA, is amended to read:

"41-3-106. Prosecution of offenders. (1) If the evidence indicates violation of the criminal code, it ~~shall be~~ is the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) The filing of a criminal charge does not toll a proceeding under this chapter.

~~(2)(3) District~~ The district court ~~shall have~~ has original jurisdiction under this section."

Section 4. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services or its local affiliate.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science ~~practitioner~~ practitioners and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) a member of the clergy; ~~or~~

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or

(j) an employee of an entity that contracts with the department to provide direct services to children.

(3) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A ~~clergy person~~ member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the ~~clergy person~~ member of the clergy or priest in that person's capacity as a ~~clergy person~~ member of the clergy or priest;

(ii) the statement was intended to be a part of a confidential communication between the ~~clergy person~~ member of the clergy or priest and a member of the ~~clergy person's or priest's~~ church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the ~~clergy person~~ member of the clergy or priest.

(c) A ~~clergy person~~ member of the clergy or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) The reports referred to under this section must contain:

1 (a) the names and addresses of the child and the child's parents or other persons responsible for
2 the child's care;

3 (b) to the extent known, the child's age and the nature and extent of the child's injuries, including
4 any evidence of previous injuries;

5 (c) any other information that the maker of the report believes might be helpful in establishing the
6 cause of the injuries or showing the willful neglect and the identity of person or persons responsible for
7 the injury or neglect; and

8 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries
9 or willful neglect, within the meaning of this chapter."

10
11 **SECTION 5. SECTION 41-3-202, MCA, IS AMENDED TO READ:**

12 **"41-3-202. Action on reporting.** (1) Upon receipt of a report that a child is or has been abused
13 or neglected, the department shall PROMPTLY assess the information contained in the report and make a
14 determination regarding the level of response required and the timeframe within which action must be
15 initiated. If the department determines that an investigation is required, a social worker, the county
16 attorney, or a peace officer shall ~~promptly~~ PROMPTLY conduct a thorough investigation into the
17 circumstances surrounding the allegations of abuse or neglect of the child. The investigation may include
18 an investigation at the home of the child involved, the child's school or day-care facility, or any other place
19 where the child is present and into all other nonfinancial matters that in the discretion of the investigator
20 are relevant to the investigation. In conducting an investigation under this section, a social worker may
21 not inquire into the financial status of the child's family or of any other person responsible for the child's
22 care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with
23 the provisions of 41-3-411.

24 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous
25 report is received. However, the investigation must within 48 hours develop independent, corroborative,
26 and attributable information in order for the investigation to continue. Without the development of
27 independent, corroborative, and attributable information, a child may not be removed from the home.

28 (3) The social worker is responsible for assessing the family and planning for the child. If the child
29 is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with

1 reasonable medical practice, has the right of access to the child for interviews, photographs, and securing
2 physical evidence and has the right of access to relevant hospital and medical records pertaining to the
3 child. If a child interview is considered necessary, the social worker, county attorney, or peace officer may
4 conduct an interview of the child. The interview may be conducted in the presence of the parent or
5 guardian or an employee of the school or day-care facility attended by the child.

6 (4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited
7 audiotape or videotape with audio track must be made available, upon request, for unencumbered review
8 by the family.

9 (5) (a) If from the investigation the department has reasonable cause to suspect that the child
10 suffered abuse or neglect, the department may provide protective services to the child pursuant to
11 41-3-301 and may provide protective services to any other child under the same care. The department
12 shall:

13 (i) after interviewing the parent or guardian, if reasonably available, document its determination
14 regarding abuse or neglect of a child; and

15 (ii) notify the child's family of its investigation and determination, unless the notification can
16 reasonably be expected to result in harm to the child or other person.

17 (b) If from the investigation it is determined that the child has not suffered abuse or neglect and
18 the initial report is determined to be unfounded, the department and the social worker, county attorney,
19 or peace officer who conducted the investigation into the circumstances surrounding the allegations of
20 abuse or neglect shall destroy all of their records concerning the report and the investigation. The
21 destruction must be completed within 30 days of the determination that the child has not suffered abuse
22 or neglect.

23 (6) The investigating social worker, within 60 days of commencing an investigation, shall also
24 furnish a written report to the department and, upon request, to the family. Subject to subsection (5)(b),
25 the department shall maintain a record system documenting investigations and determinations of child
26 abuse and neglect cases.

27 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public
28 or private residential institution, home, facility, or agency is responsible for ensuring that the report is made
29 to the department through its local office."

1

2 **Section 6.** Section 41-3-205, MCA, is amended to read:

3 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and
4 its local affiliate, the county welfare department, the county attorney, and the court concerning actions
5 taken under this chapter and all records concerning reports of child abuse and neglect must be kept
6 confidential except as provided by this section. Except as provided in subsections (4) and (5), a person
7 who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a
8 misdemeanor.

9 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it.
10 The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an
11 issue before it.

12 (3) Records, including case notes, correspondence, evaluations ~~of a child~~, videotapes, and
13 interviews, unless otherwise protected by this section or unless disclosure of the records is determined
14 to be detrimental to the child or harmful to another person who is a subject of information contained in
15 the records, may be disclosed to the following persons or entities in this state and any other state or
16 country:

17 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian
18 tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or
19 neglect and that otherwise meets the disclosure criteria contained in this section;

20 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
21 family or child who is the subject of a report in the records or to a person authorized by the department
22 to receive relevant information for the purpose of determining the best interests of a child with respect to
23 an adoptive placement;

24 (c) a health or mental health professional who is treating the family or child who is the subject of
25 a report in the records;

26 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject
27 of a report in the records or other person responsible for the child's welfare, without disclosure of the
28 identity of any person who reported or provided information on the alleged child abuse or neglect incident
29 contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group conference for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

1 (q) an employee of the department or other state agency if disclosure of the records is necessary
2 for administration of programs designed to benefit the child;

3 (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is
4 necessary to meet requirements of the federal Indian Child Welfare Act;

5 (s) a youth probation officer who is working in an official capacity with the child who is the
6 subject of a report in the records;

7 (t) a county attorney, peace officer, or attorney who is hired by or represents the department, if
8 disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or
9 neglect;

10 (u) a foster care review committee established under 41-3-1115 or, when applicable, a local
11 citizen review board established under Title 41, chapter 3, part 10;

12 (v) a school employee participating in an interview of a child by a social worker, county attorney,
13 or peace officer, as provided in 41-3-202;

14 (w) a member of a county interdisciplinary child information team formed under the provisions of
15 52-2-211;

16 (x) members of a local interagency staffing group provided for in 52-2-203;

17 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or

18 (z) a principal of a school or other employee of the school district authorized by the trustees of
19 the district to receive the information with respect to a student of the district who is a client of the
20 department.

21 (4) A person who is authorized to receive records under this section shall maintain the
22 confidentiality of the records and may not disclose information in the records to anyone other than the
23 persons described in subsection (3)(a). However, this subsection may not be construed to compel a family
24 member to keep the proceedings confidential.

25 (5) A news organization or its employee, including a freelance writer or reporter, is not liable for
26 reporting facts or statements made by an immediate family member under subsection (4) if the news
27 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of
28 the proceeding.

29 (6) This section is not intended to affect the confidentiality of criminal court records, ~~or~~ records

1 of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

2 (7) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to
3 this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be
4 provided without cost."

5

6 **Section 7.** Section 41-3-401, MCA, is amended to read:

7 **"41-3-401. Abuse and neglect petitions.** (1) The county attorney, attorney general, or an attorney
8 hired by the county is responsible for filing all petitions under this chapter. The petition must be
9 accompanied by an affidavit by the department alleging that the child appears to have been abused,
10 neglected, or abandoned and stating the basis for the allegation.

11 (2) Upon receipt of a petition, except a petition for temporary investigative authority, the court
12 shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the
13 court in setting hearing dates.

14 (3) A petition alleging abuse or neglect is a civil action brought in the name of the state of
15 Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as
16 modified in this ~~part~~ chapter. Proceedings under a petition are not a bar to criminal prosecution.

17 (4) The parents or parent, guardian, or other person or agency having legal custody of the youth
18 named in the petition, if residing in the state, must be served personally with a copy of the petition and
19 summons at least 5 working days before the date set for hearing. If the person or agency cannot be served
20 personally, the person or agency may be served by publication in the manner provided by the Montana
21 Rules of Civil Procedure for other types of proceedings.

22 (5) If personal service cannot be made upon the parents or parent, guardian, or other person or
23 agency having legal custody, the court shall appoint an attorney to represent the unavailable party when
24 in the opinion of the court the interests of justice require.

25 (6) If a parent of the child is a minor, notice must be given to the minor parent's parents or
26 guardian, and if there is no guardian, the court shall appoint one.

27 (7) Any person interested in any cause under this chapter has the right to appear. Any foster
28 parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing
29 the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right

1 to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive
2 parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

3 ~~(8) Except when the proceeding is instituted or commenced at the request of the department, a~~
4 ~~citation must be issued and served upon a representative of the department before the court hearing.~~

5 ~~———(9)~~ The petition must:

6 (a) state the nature of the alleged abuse or neglect;

7 (b) state the full name, age, and address of the youth and the name and address of the youth's
8 parents or guardian or person having legal custody of the youth;

9 (c) state the names, addresses, and relationship to the youth of all persons who are necessary
10 parties to the action.

11 ~~(10)~~(9) The petition may ask for the following relief:

12 (a) temporary investigative authority and protective services, as provided in 41-3-402;

13 (b) temporary legal custody, as provided in 41-3-406;

14 (c) appointment of a guardian pursuant to 41-3-421;

15 (d) termination of the parent-child legal relationship and either:

16 (i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or

17 (ii) appointment of a guardian; or

18 (e) any combination of the provisions of subsections ~~(10)(a)~~ (9)(a) through ~~(10)(d)~~ (9)(d) or any
19 other relief that may be required for the best interests of the child.

20 ~~(11)~~(10) A request for a determination that reunification services need not be provided pursuant
21 to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in
22 subsection ~~(10)~~ (9) of this section.

23 ~~(12)~~(11) The petition may be modified for different relief at any time within the discretion of the
24 court.

25 ~~(13)~~(12) The court may at any time on its own motion or the motion of any party appoint counsel
26 for any indigent party."

27
28 **Section 8.** Section 41-3-402, MCA, is amended to read:

29 **"41-3-402. Petition for temporary investigative authority and protective services.** (1) In a case

1 in which it appears that a youth is abused or neglected or is in danger of being abused or neglected, the
2 county attorney, the attorney general, or an attorney hired by the county may file a petition for temporary
3 investigative authority and protective services.

4 (2) A petition for temporary investigative authority and protective services must state the specific
5 authority requested and the facts establishing probable cause that a youth is abused or neglected or is in
6 danger of being abused or neglected.

7 (3) The petition for temporary investigative authority and protective services must be supported
8 by an affidavit signed by ~~the county attorney, the attorney general, or an attorney hired by the county or~~
9 ~~must be supported by a~~ a representative of the department ~~report~~ stating in detail the facts upon which
10 the request is based. The petition, or affidavit, ~~or report~~ of the department must contain information
11 regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case.
12 Except as provided in 41-3-403, the parents must be given an opportunity to address the court before the
13 court rules on the petition."

14

15 **Section 9.** Section 41-3-403, MCA, is amended to read:

16 **"41-3-403. Order for immediate protection of youth child.** (1) (a) Upon the filing of a petition for
17 temporary investigative authority and protective services, the court, after consideration of the parents'
18 statements, if any, included with the petition and any accompanying affidavit or report to the court, may
19 issue an order granting relief that may be required for the immediate protection of the youth child.

20 (b) The order, along with the petition and supporting documents, must be served pursuant to the
21 Montana Rules of Civil Procedure on the person or persons named in the order. When the youth child is
22 placed in a medical facility or protective facility, the department shall notify the parents or parent,
23 guardian, or other person having legal custody of the youth child, at the time the placement is made or
24 as soon after placement as possible.

25 (c) The order must require the person served to comply immediately with the terms of the order
26 and to appear before the court issuing the order on the date specified for a show cause hearing. The show
27 cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master
28 appointed by the judge. The person filing the petition has the burden of presenting evidence establishing
29 probable cause for the issuance of the order. At the show cause hearing, the court shall provide an

1 opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide
2 relevant testimony. The court may consider all relevant evidence in accordance with the ~~rules of civil~~
3 ~~procedure~~ Montana Rules of Evidence as modified by this part, but may in its discretion limit testimony
4 and evidence to only that which is relevant to the issues of removal from the home and the child's need
5 for continued protection. The court may amend the order. ~~Except as otherwise provided in this part, the~~
6 ~~rules of civil procedure apply.~~ Hearsay evidence of statements made by the affected youth child is
7 admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that
8 results from adverse licensing action taken by the department.

9 (d) If the child is not returned home after the show cause hearing, the person served may request
10 that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the
11 show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

12 (e) Upon a failure to comply or show cause, the court may hold the person in contempt or place
13 temporary physical custody of the youth child with the department until further order.

14 (2) At the conclusion of a show cause hearing, in an order granting or denying relief, the court
15 shall make a finding regarding the reasonableness of agency efforts to prevent the child's removal from
16 the home or to make it possible to safely return the child to the child's home. In determining preservation
17 or reunification services to be provided and in making reasonable efforts at providing preservation or
18 reunification services, the child's health and safety are of paramount concern. Reasonable efforts to
19 provide preservation or reunification services are not required if the court finds that the parent has:

20 (a) subjected a child to aggravated circumstances, including but not limited to abandonment,
21 torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

22 (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate
23 homicide of a child;

24 (c) committed aggravated assault against a child;

25 (d) committed neglect of a child that resulted in serious bodily injury or death; or

26 (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and
27 the circumstances related to the termination of parental rights are relevant to the parent's ability to
28 adequately care for the child at issue.

29 (3) Preservation or reunification services are not required for a putative father, as defined in

1 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

2 (a) contribute to the support of the child for an aggregate period of 1 year, although able to do
3 so;

4 (b) establish a substantial relationship with the child. A substantial relationship is demonstrated
5 by:

6 (i) visiting the child at least monthly when physically and financially able to do so; or

7 (ii) having regular contact with the child or with the person or agency having the care and custody
8 of the child when physically and financially able to do so; and

9 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the
10 child was not in the physical custody of the other parent.

11 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person
12 has not been:

13 (i) adjudicated in Montana to be the father of the child for the purposes of child support; and

14 (ii) recorded on the child's birth certificate as the child's father.

15 (4) If the court finds that preservation or reunification services are not necessary pursuant to
16 subsection (2), a permanency hearing must be held within 30 days of that determination and reasonable
17 efforts must be made to place the child in a timely manner in accordance with the permanency plan and
18 to complete whatever steps are necessary to finalize the permanent placement of the child.

19 (5) If reasonable efforts have been made to prevent removal of a child from the home or to return
20 a child to the child's home but continuation of the efforts is determined by the court to be inconsistent
21 with the permanency plan for the child, the department shall make reasonable efforts to place the child
22 in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary
23 to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for
24 adoption or to make an alternative out-of-home permanent placement may be made concurrently with
25 reasonable efforts to return a child to the child's home. Concurrent planning may be used.

26 (6) The court may grant ~~the following kinds of relief~~ relief under this section, which does not
27 constitute a court-ordered treatment plan under 41-3-420. The relief may include but is not limited to:

28 (a) right of entry by a peace officer or department worker;

29 (b) medical and psychological evaluation of the ~~youth~~ child or parents, guardians, or person having

1 physical or legal custody;

2 (c) requirement that the youth child, parents, guardians, or person having physical or legal custody
3 receive counseling services;

4 (d) ~~placement of right to place the youth child in a temporary medical facility or a facility for~~
5 ~~protection of the youth or out-of-home care, including but not limited to care provided by a noncustodial~~
6 ~~parent, kinship or foster family, group home, or institution;~~

7 (e) requirement that the parents, guardian, or other person having physical or legal custody furnish
8 information that the court may designate;

9 (f) requirement that the perpetrator of the alleged child abuse or neglect be removed from the
10 familial home to allow the child to remain in the home;

11 (g) requirement that a parent provide the department with the name and address of the other
12 parent, unless the other parent's parental rights to the child have been terminated;

13 (h) requirement that a parent provide the department with the names and addresses of extended
14 family members who may be considered as placement options for the child who is the subject of the
15 proceeding;

16 ~~(f)(i)~~ (i) inquiry into the financial ability of the parents, guardian, or other person having custody of
17 the youth child to contribute to the costs for the care, custody, and treatment of the youth child and
18 requirement of a contribution for those costs pursuant to the requirements of 41-3-411; or

19 ~~(g)(i)~~ (j) other temporary disposition that may be required in the best interests of the youth child that
20 does not require an expenditure of money by the department unless the department is notified and a court
21 hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort
22 after all family, insurance, and other resources have been examined.

23 (7) An order for temporary investigative authority and protective services may not be issued for
24 a period longer than 90 days following the show cause hearing ~~and must be limited to one extension of~~
25 ~~90 days~~. Before the expiration of the time provided for in an order for temporary investigative authority
26 and protective services, the county attorney, the attorney general, or an attorney hired by the county shall
27 file a petition for one of the following:

28 (a) limited emancipation;

29 (b) temporary legal custody;

1 (c) termination of the parent-child legal relationship and permanent legal custody with the right
2 to consent to adoption; or

3 (d) dismissal.

4 (8) Notwithstanding the above time limits, the court may continue an order for temporary
5 investigative authority pending a hearing on a petition provided for in subsection (7).

6 (9) If the time limitations of this section are not met, the court shall review the reasons for the
7 failure and order an appropriate remedy that considers the best interests of the child."

8
9 **Section 10.** Section 41-3-404, MCA, is amended to read:

10 **"41-3-404. Adjudicatory hearing -- temporary disposition.** (1) In the adjudicatory hearing on a
11 petition under 41-3-401, the court shall determine by a preponderance of the evidence whether the youth
12 is a youth in need of care and ascertain, as far as possible, the cause.

13 (2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the
14 parents, guardian, or nearest adult relative, and any other matters the court considers relevant in
15 determining the status of the youth. Hearsay evidence of statements made by the youth is admissible at
16 the hearing if offered by a department social worker or a professional qualified as an expert by the court.

17 ACCORDING TO THE MONTANA RULES OF EVIDENCE.

18 (3) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the
19 examination or treatment of the child do not apply, except the attorney-client privilege granted by
20 26-1-803 and the mediation privilege granted by 26-1-813.

21 (4) (a) If the court determines that the youth is not an abused or neglected child, the petition must
22 be dismissed and any order made pursuant to 41-3-403 must be vacated.

23 (b) If the youth is adjudicated a youth in need of care, the court shall set a date for a dispositional
24 hearing to be conducted within 30 days and order any necessary or required investigations. The court may
25 issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order
26 may provide for any of the forms of relief listed in 41-3-403(6)."

27
28 **Section 11.** Section 41-3-406, MCA, is amended to read:

29 **"41-3-406. Dispositional hearing -- temporary legal custody.** (1) If a ~~youth~~ child is found to be a

1 youth in need of care under 41-3-404, the court may enter its judgment, making any of the following
2 dispositions to protect the welfare of the youth child:

3 (a) permit the youth child to remain with the youth's child's parent or guardian, subject to those
4 conditions and limitations the court may prescribe;

5 (b) grant an order of limited emancipation to a youth child who is 16 years of age or older, as
6 provided in 41-3-408;

7 (c) transfer temporary legal custody to any of the following:

8 (i) the department;

9 (ii) a licensed child-placing agency that is willing and able to assume responsibility for the
10 education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to
11 receive and provide care of the youth child; or

12 (iii) a relative or other individual who is recommended by the department or a licensed child-placing
13 agency designated by the court and who is found by the court to be qualified to receive and care for the
14 youth child;

15 (d) order a party to the action to do what is necessary to give effect to the final disposition,
16 including undertaking medical and psychological evaluations, treatment, and counseling that does not
17 require an expenditure of money by the department unless the department ~~is notified and a court hearing~~
18 ~~is set in a timely manner on the proposed expenditure~~ consents and informs the court that resources are
19 available for payment. The department is the payor of last resort after all family, insurance, and other
20 resources have been examined.

21 (e) order further care and treatment as the court considers in the best interests of the child that
22 does not require an expenditure of money by the department unless the department ~~is notified and a court~~
23 ~~hearing is set in a timely manner on the proposed expenditure~~ consents and informs the court that
24 resources are available for the proposed care and treatment. The department is the payor of last resort
25 after all family, insurance, and other resources have been examined pursuant to 41-3-411.

26 (2) To grant temporary legal custody, the court shall make a finding that:

27 (a) dismissing the petition would create a substantial risk of harm to the child or detriment to the
28 child's physical or psychological well-being; and

29 (b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403,

1 reasonable services have been provided to the parent or guardian to prevent the removal of the child from
2 the home or to make it possible for the child to safely return home.

3 (3) If reasonable efforts have been made to prevent removal of a child from the home or to return
4 a child to the child's home but continuation of the efforts is determined by the court to be inconsistent
5 with permanency for the child, the department shall make reasonable efforts to place the child in a timely
6 manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the
7 permanent placement of the child.

8 (4) If the court finds that reasonable efforts are not necessary pursuant to subsection (2) or (3),
9 a permanency plan hearing must be held within 30 days of that determination and reasonable efforts must
10 be made to place the child in a timely manner in accordance with the permanency plan and to complete
11 whatever steps are necessary to finalize the permanent placement of the child.

12 (5) An order for temporary legal custody may be in effect for no longer than 6 months. Before the
13 expiration of the order for temporary legal custody, the county attorney, the attorney general, or an
14 attorney hired by the county shall petition for one of the following:

15 (a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing
16 that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

17 (b) termination of the parent-child legal relationship and either:

18 (i) permanent legal custody with the right of adoption; or

19 (ii) appointment of a guardian pursuant to 41-3-607;

20 (c) long-term custody pursuant to 41-3-412;

21 (d) appointment of a guardian pursuant to 41-3-421; or

22 (e) dismissal.

23 (6) The court may continue an order for temporary legal custody pending a hearing on a petition
24 provided for in subsection (5).

25 (7) If an extension of temporary legal custody is granted to the department under subsection
26 (5)(a), the court shall state the reasons why the child was not returned home and the conditions upon
27 which the child may be returned home and must specifically find that an extension is in the child's best
28 interests.

29 (8) If the time limitations of this section are not met, the court shall review the reasons for the

1 failure and order an appropriate remedy that considers the best interests of the child."

2

3 **Section 12.** Section 41-3-411, MCA, is amended to read:

4 **"41-3-411. Contributions by parents or guardians for youth's care.** (1) If physical or legal custody
5 of the youth is transferred to the department, the court shall examine the financial ability of the youth's
6 parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and
7 treatment of the youth, including the costs of necessary medical, dental, and other health care.

8 (2) If the court determines that the youth's parents or guardians are financially able to pay a
9 contribution as provided in subsection (1), the court shall order the youth's parent or guardian to pay an
10 amount based on the uniform child support guidelines adopted by the department of public health and
11 human services pursuant to 40-5-209.

12 (3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each
13 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
14 under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is
15 nevertheless subject to withholding for the payment of the contribution without need for an amendment
16 of the support order or for any further action by the court.

17 (b) A court-ordered exception from contributions under this section must be in writing and must
18 be included in the order. An exception from the immediate income withholding requirement may be granted
19 if the court finds that there is:

20 (i) good cause not to require immediate income withholding; or

21 (ii) an alternative arrangement between the department and the person who is ordered to pay
22 contributions.

23 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
24 based upon:

25 (i) a written determination and explanation by the court of the reasons why the implementation
26 of immediate income withholding is not in the best interests of the child; and

27 (ii) proof of timely payment of previously ordered support in cases involving modification of
28 contributions ordered under this section.

29 (d) An alternative arrangement must:

1 (i) provide sufficient security to ensure compliance with the arrangement;

2 (ii) be in writing and be signed by a representative of the department and the person required to
3 make contributions; and

4 (iii) if approved by the court, be entered into the record of the proceeding.

5 (4) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay,
6 the court may modify its order for the payment of contributions required under subsection (2).

7 (5) (a) If the court orders the payment of contributions under this section, the department shall
8 apply to the department of public health and human services for support enforcement services pursuant
9 to Title IV-D of the Social Security Act.

10 (b) The department of public health and human services may collect and enforce a contribution
11 order under this section by any means available under law, including the remedies provided for in Title 40,
12 chapter 5, parts 2 and 4."

13
14 **Section 13.** Section 41-3-412, MCA, is amended to read:

15 **"41-3-412. Permanency plan hearing.** (1) A permanency plan hearing must be held by the court
16 no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect
17 or 12 months after the child's first 60 days of removal from the home, whichever comes first, unless the
18 proceeding has been dismissed, the child was not removed from the home, or the child has been returned
19 to the child's parent or guardian. The permanency plan hearing may be combined with a hearing that is
20 required in other sections of this part if held within the time limits of that section. If a permanency plan
21 hearing is combined with another hearing, the requirements of the court related to the disposition of the
22 other hearing must be met in addition to the requirements of this section.

23 (2) At least 3 days prior to the permanency plan hearing, the department and the guardian ad litem
24 shall each submit a report regarding the child to the court for review. The report must contain the:

25 (a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment
26 plan;

27 (b) extent to which the parent or guardian cooperated and used the services provided;

28 (c) status of the child, including the child's mental, and physical, ~~and psychological~~ health; and

29 (d) plan for permanency for the child, including specific times for achieving the plan.

(3) At least 3 days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) If the court finds that the permanency plan is in the best interests of the child, the court shall order the department to take whatever steps are necessary to effectuate the terms of the plan, including returning the child safely to the child's home, and shall order the county attorney, the attorney general, or an attorney hired by the county to file any necessary petition to implement the plan with the court within 30 days after the present hearing unless a petition has already been filed.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the provisions in subsection (6) and that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) If the permanency plan hearing results in a finding that reunification of the child with the child's parent or guardian is not in the best interests of the child, a subsequent petition filed must be one of the following:

(a) termination of parental rights if the applicable requirements to terminate parental rights have been met;

(b) appointment of a guardian pursuant to 41-3-421; or

(c) ~~long-term custody~~ a planned permanent living arrangement ~~of~~ for a child if the evidence demonstrates by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

~~(ii)~~ (ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

~~(iii)~~ (iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

~~(iv)~~ (iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent;

~~(iv)~~(v) the child is in a group of siblings, at least one of whom meets the requirements of subsections (6)(c)(v)(A) through (6)(c)(v)(D), and the best interests of the child will be met by continued placement in the sibling group in ~~long-term foster care~~ a planned permanent living arrangement; or

~~(v)~~(vi) the child ~~is at least 12 years of age and~~ meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) a judicial finding has been made that other more permanent options are not appropriate or are not in the best interests of the child;

~~(E)~~(D) termination of parental rights to the child is not in the child's best interests; and

~~(D)~~(E) the child has been in a placement in which the foster parent has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate ~~long-term custody~~ a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 14. Section 41-3-413, MCA, is amended to read:

"41-3-413. Review hearing. Within 12 months of a finding that reunification is not in the best interests of the child and every 12 months thereafter until the permanent placement of the child is finalized, the court shall make additional findings regarding the department's reasonable efforts to make and finalize a permanent placement for the child."

Section 15. Section 41-3-420, MCA, is amended to read:

"41-3-420. Treatment plan -- contents -- changes. (1) ~~Upon the stipulation of the parties or upon a judicial finding that a child is a youth in need of care, the~~ The court may order a treatment plan if:

(a) the parents admit the allegations of an abuse and neglect petition or make stipulations pursuant to [section 31] 32]; or

1 (b) the court has made an adjudication under 41-3-404 that the child is a youth in need of care.

2 (2) Every treatment plan must contain the following information:

3 (a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

4 (b) the treatment goals and objectives for each condition or requirement established in the plan.

5 If the child has been removed from the home, the treatment plan must include but is not limited to the
6 conditions or requirements that must be established for the safe return of the child to the family.

7 (c) the projected time necessary to complete each of the treatment objectives;

8 (d) the specific treatment objectives that clearly identify the separate roles and responsibilities of
9 all parties addressed in the treatment plan; and

10 (e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

11 (3) A treatment plan may include but is not limited to any of the following remedies, requirements,
12 or conditions:

13 (a) the right of entry into the child's home for the purpose of assessing compliance with the terms
14 and conditions of a treatment plan;

15 (b) the requirement of either the child or the child's parent or guardian to obtain medical or
16 psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

17 (c) the requirement of either the child or the child's parent or guardian to obtain psychological
18 treatment or counseling;

19 (d) the requirement of either the child or the child's parent or guardian to obtain and follow
20 through with alcohol or substance abuse evaluation and counseling, if necessary;

21 (e) the requirement that either the child or the child's parent or guardian be restricted from
22 associating with or contacting any individual who may be the subject of a department investigation;

23 (f) the requirement that the child be placed in a temporary medical facility or a facility for
24 protection of the youth;

25 (g) the requirement that the parent, guardian, or other person having physical or legal custody
26 furnish services that the court may designate.

27 (4) A treatment plan may not be altered, amended, continued, or terminated without the approval
28 of the parent or parents or guardian pursuant to a stipulation and order or order of the court."

29

1 **Section 16.** Section 41-3-604, MCA, is amended to read:

2 **"41-3-604. When petition to terminate parental rights required.** (1) If a child has been in foster
3 care under the physical custody of the state for 15 months of the most recent 22 months, the best
4 interests of the child must be presumed to be served by termination of parental rights. If a child has been
5 in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts
6 to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-403,
7 a petition to terminate parental rights must be filed unless:

8 (a) the child is being cared for by a relative;

9 (b) the department has not provided the services considered necessary for the safe return of the
10 child to the child's home; or

11 (c) the department has documented a compelling reason, available for court review, for
12 determining that filing a petition to terminate parental rights would not be in the best interests of the child.

13 (2) Compelling reasons for not filing a petition to terminate parental rights include but are not
14 limited to the following:

15 (a) There are insufficient grounds for filing a petition.

16 (b) There is adequate documentation that termination of parental rights is not the appropriate plan
17 and not in the best interests of the child.

18 (3) If a child has been in foster care for 15 months of the most recent 22 months and a petition
19 to terminate parental rights regarding that child has not been filed with the court, the department shall file
20 a report to the court or review panel at least 3 days prior to the next hearing or review detailing the
21 reasons that the petition was not filed.

22 (4) If a hearing results in a finding of abandonment or that the parent has subjected the child to
23 any of the circumstances listed in 41-3-403(2)(a) through (2)(e) and that reasonable efforts to provide
24 preservation or reunification are not necessary, unless there is an exception made pursuant to subsections
25 (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of
26 the finding.

27 (5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an
28 extension of temporary legal custody pursuant to 41-3-406, a petition for a planned permanent living
29 arrangement pursuant to 41-3-412, or a petition to dismiss must be filed."

1

2 **Section 17.** Section 41-3-1102, MCA, is amended to read:

3 **"41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

4 (1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or
5 more children or youth.

6 (2) "Department" means the department of public health and human services provided for in
7 2-15-2201.

8 (3) "Foster child" means a person under 18 years of age who has been placed by the department
9 in a youth care facility.

10 (4) "Person" means any individual, partnership, voluntary association, or corporation.

11 (5) "Respite care" means the provision of temporary, short-term supervision or care of a foster
12 child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care
13 requirements of a foster child whose mental or physical condition requires special or intensive supervision
14 or care. Respite care includes but is not limited to homemaker services, child care, and emergency care
15 either in the home or out of the home.

16 (6) "Respite care provider" means a person who meets the qualifications and requirements
17 established by the department to provide respite care under 41-3-1151.

18 (7) "Substitute care" means full-time care of a youth in a residential setting who is placed by the
19 department, another state agency, or a licensed child-placing agency. Individuals who provide care to
20 youth who are recipients of services provided through the department's developmental disabilities, mental
21 health, or medicaid home- and community-based services waiver program are also considered to be
22 providing substitute care. This part does not apply when a person accepts the care and custody of a child
23 on a temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

24 (8) "Transitional living program" means a program with the goal of self-sufficiency in which
25 supervision of the living arrangement is provided for a youth who is 16 years of age or older and under
26 21 years of age.

27 ~~(8)(9)~~ "Youth assessment center" has the meaning provided in 41-5-103.

28 ~~(9)~~(10) "Youth care facility" means a facility that is licensed by the department or by the
29 appropriate licensing authority in another state and in which facility substitute care is provided to youth.

1 The term includes youth foster homes, youth group homes, child-care agencies, transitional living
2 programs, and youth assessment centers.

3 ~~(10)~~(11) "Youth foster home" means a youth care facility in which substitute care is provided to
4 one to six children or youth other than the foster parents' own children, stepchildren, or wards.

5 ~~(11)~~(12) "Youth group home" means a youth care facility in which substitute care is provided to
6 7 to 12 children or youth."
7

8 **Section 18.** Section 41-3-1103, MCA, is amended to read:

9 **"41-3-1103. Powers and duties of department.** (1) The department shall:

10 (a) administer all state and federal funds allocated to the department for youth foster homes,
11 youth group homes, child-care agencies, and ~~youth assessment centers~~ transitional living programs for
12 youth in need of care, as defined in 41-3-102;

13 (b) exercise licensing authority over all youth foster homes, youth group homes, child-care
14 agencies, transitional living programs, and youth assessment centers;

15 (c) collect and disseminate information relating to youth in need of care;

16 (d) provide for training of program personnel delivering services;

17 (e) in cooperation with youth care facility providers, develop and implement standards for youth
18 care facilities;

19 (f) maintain adequate data on placements it funds in order to keep the legislature properly informed
20 of the following:

21 (i) the number of youth in need of care in out-of-home care facilities;

22 (ii) the cost per facility for services rendered;

23 (iii) the type and level of care of services provided by each facility;

24 (iv) a profile of out-of-home care placements by level of care; and

25 (v) a profile of public institutional placements;

26 (g) administer all funds allocated to the department for residential alcohol and drug abuse
27 treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent
28 delinquent youths who require treatment; and

29 (h) provide reimbursement for mental health outpatient counseling services for persons who

1 experience the death of a foster child while providing substitute care to the foster child in a youth care
2 facility.

3 (2) The department may:

4 (a) enter into contracts with nonprofit corporations or associations or private organizations to
5 provide substitute care for youth in need of care in youth care facilities;

6 (b) accept gifts, grants, and donations of money and property from public and private sources to
7 initiate and maintain community-based services to youth;

8 (c) adopt rules to carry out the administration and purposes of this part.

9 (3) The department shall pay for room, board, clothing, personal needs, and transportation, ~~and~~
10 ~~treatment~~ in youth foster care homes and youth group homes for ~~youths committed to~~ youth who are in
11 the physical or legal custody of the department and who need to be placed in the facilities. Payments for
12 the clothing of a ~~child~~ youth placed in a youth foster home must be provided to the extent that the ~~child~~
13 youth needs a basic wardrobe or has a special clothing need. Upon approval by the department, payments
14 under this subsection may continue for a youth up to 21 years of age who remains in substitute care.
15 Payments under this subsection may not exceed appropriations for the purposes of this subsection.

16 (4) The department may provide a subsidy for a guardianship of a child who is in the department's
17 legal custody if the guardianship has been approved by the department pursuant to 41-3-421 and in
18 accordance with eligibility criteria established by department rule."

19

20 **Section 19.** Section 41-3-1115, MCA, is amended to read:

21 **"41-3-1115. Foster care review committee.** (1) Except as provided in Title 41, chapter 3, part 10,
22 in every judicial district the ~~youth district~~ court judge, in consultation with the department, shall appoint
23 a foster care review committee. The members of the committee must be willing to act without
24 compensation. The committee shall be composed of not less than five or more than seven members. The
25 members shall include:

26 (a) a representative of the department;

27 (b) a representative of the youth court;

28 (c) someone knowledgeable in the needs of children in foster care placements who is not
29 employed by the department or the youth court;

1 (d) a representative of a local school district;

2 (e) if the child whose care under review is an Indian, someone, preferably an Indian person,
3 knowledgeable about Indian cultural and family matters who is appointed effective only for and during that
4 review; and

5 (f) if there is one, the foster parent of the child whose care is under review. The foster parent's
6 appointment is effective only for and during that review.

7 (2) When a child is in foster care under the supervision of the department or if payment for care
8 is made pursuant to 41-3-1122, the committee shall conduct a review of the foster care status of the
9 child. The review must be conducted within a time limit established by the department. The time limit must
10 comply with federal law and may not be later than the 12-month anniversary date of the child's placement
11 into foster care the Adoption and Safe Families Act of 1997, as enacted.

12 (3) The department shall provide the committee with guidelines for operation of the committee.
13 Within 30 days of the foster care review, the committee shall provide the youth court and the department
14 a written report of its findings and recommendations for further action by the youth court or the
15 department.

16 (4) The department shall adopt rules necessary to carry out the purposes of this section.

17 (5) Because of the individual privacy involved, meetings of the committee, reports of the
18 committee, and information on individuals' cases shared by committee members are confidential and
19 subject to the confidentiality requirements of the department.

20 (6) The committee is subject to the call of the youth court judge to meet and confer with the judge
21 on all matters pertaining to the foster care of a child before the youth court."

22
23 **Section 20.** Section 41-3-1142, MCA, is amended to read:

24 **"41-3-1142. Issuance of license -- authority of issuing agency -- rules.** (1) The department may
25 issue licenses to persons operating youth care facilities or grant approval of kinship or extended family care
26 providers and prescribe the conditions upon which licenses and approvals may be issued. The department
27 may make rules necessary for the licensure or approval, operation, and regulation of those facilities
28 consistent with the welfare of the residents.

29 (2) The department may inspect all licensed facilities or approved homes and, as appropriate,

undertake action, including but not limited to the revocation of licenses and approvals.

(3) The person providing care in the facilities or homes shall give the department any information that may be required and afford the department every reasonable opportunity for observing the operation of the facilities or homes.

(4) The department shall require an applicant for a youth foster home license to submit to a criminal and child protection background check, which must include information pertaining to criminal convictions, reports of domestic violence, and substantiated child abuse or neglect of children. The department shall request information from in-state and out-of-state agencies as appropriate. REQUIRE A CRIMINAL BACKGROUND INVESTIGATION OF EACH APPLICANT BY MEANS OF A FINGERPRINT CHECK BY THE MONTANA DEPARTMENT OF JUSTICE AND THE FEDERAL BUREAU OF INVESTIGATION."

Section 21. Section 42-3-202, MCA, is amended to read:

"42-3-202. Initiation of preplacement evaluation -- who conducts evaluation -- payment of fees.

(1) A prospective adoptive parent who wishes to adopt a child may initiate the process by:

(a) establishing a client relationship with the department or a licensed child-placing agency; or

(b) requesting a preplacement evaluation from ~~either the department,~~ a licensed social worker, or a licensed child-placing agency.

~~(2) The department may contract with a licensed social worker or a licensed child-placing agency to conduct the evaluation. In a direct parental placement adoption, the preplacement evaluation must be conducted by either a licensed social worker or a licensed child-placing agency.~~

(3) The prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated according to the ~~department's or licensed child-placing agency's standards for placement of a child~~ provisions of this part.

(4) A department or agency from which an individual is seeking to adopt a child may require the individual to be evaluated by its own qualified employee or independent contractor even if the individual has received a favorable preplacement evaluation from another evaluator.

(5) Fees for the study and report are set by the entity completing them and must be paid for by the prospective adoptive parent."

1 **Section 22.** Section 42-3-301, MCA, is amended to read:

2 **"42-3-301. Requirement for preplacement evaluation.** (1) Before the department or licensed
3 child-placing agency may place a child for purposes of adoption, the prospective adoptive parent and the
4 home of the prospective adoptive parent must be studied and evaluated as provided in ~~42-3-202~~ part 2
5 of this chapter.

6 (2) The department or agency shall prepare a written report containing the results of its
7 evaluation."

8
9 **Section 23.** Section 42-4-112, MCA, is amended to read:

10 **"42-4-112. Period for postplacement supervision.** (1) In a direct parental placement adoption, the
11 court shall maintain jurisdiction over the placement during a postplacement evaluation period and issue an
12 order for postplacement supervision and a postplacement evaluation.

13 (2) The postplacement evaluation period must be supervised and evaluated by a licensed social
14 worker or other qualified person appointed, contracted with, or employed by:

15 (a) the department, if the department has accepted supervision of the placement; or

16 (b) a licensed child-placing agency.

17 (3) The court shall provide the evaluator with copies of the petition for adoption and the items filed
18 with the petition.

19 (4) A decree of adoption may not be entered for at least 6 months from the date an order is
20 entered granting temporary custody during the pendency of the proceedings."

21
22 **Section 24.** Section 42-5-101, MCA, is amended to read:

23 **"42-5-101. Petition for adoption.** (1) A petition for adoption must be ~~notarized by the petitioners~~
24 verified and must specify:

25 (a) the full names, ages, and place and duration of residence of the petitioners;

26 (b) the current marital status of petitioners and, if married, the place and date of the marriage;

27 (c) the circumstances under which the petitioners obtained physical custody of the child and the
28 name of the individual or agency that placed the child;

29 (d) the date and place of birth of the child, if known;

(e) the name used for the child in the proceeding and, if a change in name is desired, the full name by which the child is to be known;

(f) that it is the desire of the petitioners that the relationship of parent and child be established between the petitioners and the child and to have all the rights and be subject to all the duties of that relationship;

(g) a full description and statement of value of all property owned or possessed by the child;

(h) the facts, if any, that excuse consent on the part of a person whose consent is required for the adoption;

(i) that any applicable law governing interstate or intercountry placement was complied with;

(j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;

(k) whether a previous petition has been filed by the petitioners to adopt the child at issue or any other child in any court and the disposition of the petitions; and

(l) the name and address, if known, of any person who is entitled to receive notice of the petition for adoption.

(2) There must be attached to or accompanying the petition:

(a) any written consent required by 42-2-301;

(b) a certified copy of any court order terminating the rights of the child's parents;

(c) a certified copy of any existing court order in any pending proceeding concerning custody of or visitation with the child;

(d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child with a special need;

(e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;

(f) a disclosure of any disbursements made in connection with the adoption proceeding.

(3) One copy of the petition must be retained by the court. A copy must be sent to:

(a) the department or to the agency participating in the adoption proceeding; ~~or~~

(b) the parent placing the child for adoption in a direct parental placement adoption; or

(c) the child's guardian ad litem if the child has one.

(4) Proceedings initiated under this part are subject to the Montana Rules of Civil Procedure except as modified by this part."

1

2 **Section 25.** Section 42-5-103, MCA, is amended to read:

3 **"42-5-103. Notice of hearing.** (1) Upon the filing of a petition for adoption, notice of hearing must
4 be served on:

5 (a) a person whose consent to adoption is required under 42-2-301;

6 (b) the department or agency whose consent to adoption is required;

7 (c) the spouse of the petitioner if the spouse has not joined in the petition;

8 (d) a person who has revoked a consent or relinquishment or is attempting to have a consent or
9 relinquishment set aside; ~~and~~

10 ~~(e) the child's guardian ad litem if the child has one; and~~

11 ~~(e)(f)~~ any other person named by the court to receive notice.

12 (2) The notice must direct the person to appear in court at the time specified and to show cause
13 why the petition should not be granted.

14 ~~(3) The notice of hearing must be served in a manner appropriate under the Montana Rules of Civil
15 Procedure.~~

16 ~~(4)~~(3) A notice of hearing is not required to be served on any party:

17 (a) whose parental rights have been terminated in prior proceedings;

18 (b) who waives notice in a relinquishment, consent, or other document signed by the party;

19 (c) who has consented in writing to an adoption; or

20 (d) whose consent to adoption is not required under 42-2-302."

21

22 **Section 26.** Section 42-8-101, MCA, is amended to read:

23 **"42-8-101. Definitions.** As used in this part, the following definitions apply:

24 (1) "Person" includes any individual, partnership, voluntary association, or corporation.

25 (2) "Placement activities" means any of the following:

26 (a) placement of a child for adoption or foster care;

27 (b) arranging or providing short-term foster care for a child pending an adoptive placement; or

28 (c) facilitating placement of a child by maintaining a list in any form of birth parents or prospective
29 adoptive or foster parents.

(3) "Soliciting" means to request, offer, promote, or refer, ~~or entice~~, either directly or indirectly through correspondence, advertising, or other method, a potential adoptive or foster parent or couple, birth parent or parents, or placement of a child by a birth parent."

Section 27. Section 42-8-103, MCA, is amended to read:

"42-8-103. License required -- term of license -- no fee charged. (1) Only an entity holding a current child-placing agency license issued by the department may act as an agency for the purpose of:

(a) procuring or selecting proposed adoptive or foster homes;

(b) placing children in proposed adoptive or foster homes;

(c) soliciting persons to adopt or foster children or arranging for persons to adopt or foster children;

(d) soliciting persons to relinquish children or place children in potential adoptive or foster homes;

or

(e) engaging in placement activities.

(2) Licenses are valid for 1 year after issuance. A fee may not be charged for a license."

Section 28. Section 42-8-104, MCA, is amended to read:

"42-8-104. Requirements for licensure. The department may issue licenses to agencies meeting the following minimum requirements:

(1) The chief function of the agency or a specific program within the agency must be the care and placement of children.

(2) The agency operates on a nonprofit basis and is financially responsible in and for its operation.

(3) The agency meets the requirements as designated by the department by rule.

(4) The directing or managing personnel of the agency must be qualified both on the basis of professional educational experience and character.

(5) ~~Complete~~ The agency shall maintain complete records ~~must be kept of both~~ of the children and ~~adopting~~ adoptive or foster parents with which the agency deals, ~~and the~~ Adoption records must be maintained in accordance with 42-6-101.

(6) The agency shall maintain and use an in-state office for making a social study of the child ~~and~~

~~proposed adoptive parent before placement of the child, particularly with regard to:~~

~~—— (a) the physical and mental health, emotional stability, and personal integrity of the adoptive parent and the parent's ability to promote the child's welfare; and~~

~~—— (b) the physical and mental condition of the child and the child's family background.~~

(7) The agency shall maintain and use an in-state office for conducting a preplacement evaluation for adoptive parents or a home study for foster parents, particularly with regard to the physical and mental health, emotional stability, and personal integrity of the adoptive or foster parents and their ability to promote the child's welfare.

~~(7)(8)~~ The agency must have the ability to provide education for adoptive or foster parents and counseling for placing parents as required in 42-2-409 and department rules.

~~(8)(9)~~ The agency shall agree to cooperate with courts having jurisdiction in adoptive or foster care matters and with other public agencies having to deal with the welfare of children.

~~(9)(10)~~ The agency shall, annually, submit a full, complete, and true financial statement to the department, and the statement must contain a full accounting of the operations of the agency during the preceding year."

Section 29. Section 42-8-107, MCA, is amended to read:

"42-8-107. Investigation of agencies -- cancellation of licenses. (1) The department may, through its authorized representative, investigate the operations of licensed agencies and may cancel licenses for failure to observe prescribed rules or to maintain minimum requirements. An agency shall give to representatives of the department all information requested and allow them to observe the operation of the agency.

(2) When the department finds, upon the basis of the statement required by 42-8-104~~(9)~~(10) or upon its own investigation, that an agency has not conducted or is financially incapable of conducting its operations according to the established standards, the department may suspend, revoke, or deny a license for the agency."

NEW SECTION. Section 30. Limitation on placement. Except as provided in 41-3-301(1) AND IN THE ABSENCE OF A DISPUTE BETWEEN THE PARTIES TO THE ACTION REGARDING THE APPROPRIATE PLACEMENT, the

department shall determine the appropriate placement for a child alleged to be or adjudicated as a youth in need of care. THE COURT SHALL SETTLE ANY DISPUTE BETWEEN THE PARTIES TO AN ACTION REGARDING THE APPROPRIATE PLACEMENT. The child may not be placed in a youth assessment center, youth detention facility, detention center, or other facility intended or used for the confinement of adults or youth accused or convicted of criminal offenses.

NEW SECTION. Section 31. Rulemaking authority. The department shall adopt rules necessary to carry out the purposes of this chapter.

NEW SECTION. Section 32. Stipulations. ~~(1)~~ Subject to approval by the court, a parent may stipulate TO ANY OF THE FOLLOWING:

~~—— (a) a judicial finding that the parent has abused or neglected a child;~~

~~—— (b) a judicial finding that the child is a youth in need of care;~~

~~—— (c) a dispositional order.~~

~~—— (2) A stipulation must be in writing and must be approved by the court. The court may approve a stipulation if it determines that the parties understand the content and consequences of the stipulation.~~

~~—— (3) A stipulation may be made at any time after a parent first appears before the court and before adjudication by the court. A stipulated adjudication must contain findings of fact that accurately describe the abuse or neglect. The court may not approve stipulated adjudicatory findings that do not accurately describe the reasons for state intervention.~~

~~—— (4) A stipulation to a dispositional order must address the facts supporting child placement, care, treatment decisions, and further actions and progress expected of the parties and must comply with the findings of fact and conclusions of law required for dispositions under 41-3-406 that are contested.~~

(1) THE CHILD MEETS THE DEFINITION OF A YOUTH IN NEED OF CARE BY THE PREPONDERANCE OF THE EVIDENCE;

(2) A TREATMENT PLAN, IF THE CHILD HAS BEEN ADJUDICATED A YOUTH IN NEED OF CARE; OR

(3) THE DISPOSITION.

NEW SECTION. Section 33. Repealer. Sections 41-3-1014, 41-3-1104, and 41-3-1114, MCA, are repealed.

NEW SECTION. Section 34. Codification instruction. [Sections ~~29 through 31~~] 30 THROUGH 32 are intended to be codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [~~sections 29 through 31~~] 30 THROUGH 32].

- END -